85-322

No. .....

Supreme Court, U.S.
FILED
AUG 27 1985
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1985

—o—

EAGLE BOOKS, INC.,

Petitioner,

v.

RICHARD M. JONES, et al.,

Respondents.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

—o—

GLENN A. STANKO
J. STEVEN BECKETT
RENO, O'BYRNE & KEPLEY, P.C.
501 West Church Street
P. O. Box 693
Champaign, IL 61820
(217) 352-7661
Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

QUESTION PRESENTED

Whether picketing-related conduct designed to directly intimidate patrons and employees from entering an adult bookstore, which conduct includes the actual and threatened photographing of customers, is protected by the First Amendment.

PARTIES TO THE PROCEEDINGS

The petitioner is Eagle Books, Inc., a corporation, d/b/a Urbana News.

The respondents are Richard M. Jones, Citizens for Decency Through Law, Urbana-Champaign, Illinois Chapter, a voluntary unincorporated association, and Crusaders Church, a voluntary unincorporated association.

TABLE OF CONTENTS

SUBJECT INDEX

	Pages
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Opinion Below	2
Jurisdiction	2
Constitutional Provisions Involved	3
Statement of the Case	3
Reasons for Granting the Writ	6
Conclusion	13

APPENDIX INDEX

Opinion of the Fourth District Appellate Court for the State of Illinois	App. 1
Order of Illinois Supreme Court denying leave to appeal	App. 14
United States Constitution, First Amendment and Fourteenth Amendment	App. 15
Order of Champaign County Circuit Court	App. 16

TABLE OF AUTHORITIES

Pages

CASES

Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968) 2, 7

Building Service Employees International Union Local 262 v. Gazzam, 339 U.S. 532 (1950) 6, 7, 8

Carpenters' Union v. Citizens Committee, 333 Ill. 225 (1928) 8

Chaplinsky v. State of New Hampshire, 315 U.S. 568 (1957) 12

Cox v. New Hampshire, 312 U.S. 569 (1941) 7

Heller v. New York, 413 U.S. 483 (1973) 12

Hughes v. Superior Court, 339 U.S. 460 (1950) 7, 8

Illinois Power Co. v. Latham, 15 Ill.App.3d 156, 303 N.E.2d 448 (5th Dist. 1973) 8

International Brotherhood, etc. v. Hanke, 339 U.S. 470 (1950) 7, 8

Kovacs v. Cooper, Judge, 336 U.S. 77 (1949) 10

Maryland v. Macon, — U.S. —, 105 S.Ct. 2778 (1985) 6

Milk Wagon Drivers' Union, Etc. v. Meadowmoor Dairies, 312 U.S. 287 (1941) 7

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) 5, 6, 8, 9, 10, 11, 12, 13

Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971) 2, 8, 9, 13

Roaden v. Kentucky, 413 U.S. 496 (1973) 6

United States v. O'Brien, 391 U.S. 367 (1968) 10

Walker v. City of Birmingham, 388 U.S. 307 (1967) 10

Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957) 7, 12

CONSTITUTIONAL PROVISIONS

Pages

United States Constitution, First Amendment 3, 4, 5, 6, 8, 9, 10, 12, 13

United States Constitution, Fourteenth Amendment 3, 6, 11, 12

No. .....

—o—

In The

Supreme Court of the United States

October Term, 1985

—o—

EAGLE BOOKS, INC.,

Petitioner,

v.

RICHARD M. JONES, et al.,

Respondents.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

—o—

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Appellate Court of the State of Illinois, Fourth District, entered on January 30, 1985.

—o—

OPINION BELOW

The opinion of the Appellate Court of the State of Illinois, Fourth District, is reported at 130 Ill.App.3d 407, 474 N.E.2d 444 (1985). A copy of the opinion is included in the Appendix as Exhibit A.

—o—

JURISDICTION

Jurisdiction in this cause is premised upon 28 U.S.C. § 1257(3) for review by certiorari of the decision of the Illinois Appellate Court, Fourth District. A written opinion was issued by that court on January 30, 1985. Petitioner sought leave to appeal from the Illinois Supreme Court in a timely fashion. On June 4, 1985, the Illinois Supreme Court denied its petition for leave to appeal. A copy of the order denying leave to appeal is included in the Appendix as Exhibit B.

Although the order which was reviewed by the Illinois Appellate Court was one entered upon an application for preliminary injunctive relief, it provides that it shall remain in effect during the pendency of the cause or until further order of the court. The order has been in effect since August 13, 1984. Further, the issuance of a permanent injunction upon the same terms will be little more than a formality. In addition, Illinois applies no less rigorous standards to preliminary injunctive relief than to permanent injunctive relief and the disputed order does not rest on a disputed question of fact that might be resolved differently upon further hearing. *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968).

CONSTITUTIONAL PROVISIONS INVOLVED

Relevant portions of the First and Fourteenth Amendments to the Constitution of the United States are set forth in the Appendix as Exhibit C.

———o———

STATEMENT OF THE CASE

Petitioner owns and operates an adult bookstore and arcade in Urbana, Illinois. On August 3, 1984, petitioner filed a verified complaint seeking injunctive relief from the picketing-related activities of the respondents which had commenced in late June of 1984. The complaint did not seek to enjoin the picketing itself. It did specifically raise petitioner's First Amendment interests.

Petitioner specifically alleged that the respondents had been harassing and intimidating, or attempting to harass and intimidate, patrons, potential patrons, and employees of the petitioner by engaging in various activities, which included taking photographs, threatening to take photographs, threatening to publish photographs, taking license plate numbers, threatening to take license plate numbers, verbal shouting, and verbal abuse. Several specific incidents were alleged, including one involving a chant of "come on out fly-boy" directed by the respondents towards a patron who was a member of the United States Air Force and who, as a result of that chant, threatened to do harm to the picketers. Further specific acts of incited violence were alleged, including one assault which had been provoked when a picketer jumped in front of a patron for the purpose of taking his picture.

Trespasses on petitioner's property, complaints from neighboring businesses and a neighboring trailer park, and interference with traffic were all alleged. Petitioner further asserted that the number of picketers was such as to impede and discourage entry into its parking areas. Finally, petitioner charged that numerous calls to the Urbana Police Department had resulted in no action and complained of a substantial reduction in the number of its customers and a substantial loss of revenue during the period in which picketing had been conducted.

Public statements of respondent Jones were incorporated into petitioner's complaint, including one in which he acknowledged that respondents had been taking pictures of the patrons of petitioner and stated that "anybody who does not want their picture taken had better not come here." Further, the avowed purpose of the picketing was to force the closure of plaintiff's business by forcing customers away from the premises through the activities of the picketers. Respondent Jones claimed that the picketers had cut petitioner's patronage in half during a prior three-week period.

Respondents did not deny the verified allegations of plaintiff's complaint, but merely filed an "objection to issuance of temporary restraining order or preliminary injunction", taking the position that the complaint on its face did not support the issuance of a preliminary injunction or temporary restraining order, even if the facts were taken as true. Respondents argued that their conduct was protected by the First Amendment.

After hearing on August 7, 1984, the trial court judge, characterizing the case as "First Amendment meets First

Amendment", restrained the respondents from trespassing and from blocking access to petitioner's premises, but denied the balance of the prayer for preliminary injunctive relief. A written order was entered and filed on August 13, 1984, a copy of which is included in the Appendix as Exhibit D. Timely notice of interlocutory appeal was filed by petitioner on August 15, 1984.

The Appellate Court of Illinois, Fourth District, affirmed the trial court. After rejecting respondent's arguments that petitioner had failed to demonstrate either irreparable harm or an inadequate remedy at law, it found that petitioner had no likelihood of success on the merits, holding that the activities of the respondents were entitled to First Amendment protection under this court's decision in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). The Appellate Court rejected petitioner's argument that the intimidation tactics of the respondents fell outside the protection of the First Amendment to the Constitution of the United States. It further rejected petitioner's argument that the unlawful purpose of the picketing removed any First Amendment protection.

Petitioner sought timely review by the Illinois Supreme Court, filing a petition for leave to appeal, once again raising the First Amendment issue. The petition for leave to appeal was denied on June 4, 1985. The mandate of the Illinois Supreme Court has been stayed pending review by this court.

———o———

REASONS FOR GRANTING THE WRIT

Petitioner's First Amendment rights emanating from the operation of its bookstore are entitled to protection from respondents' unlawful intimidation associated with picketing activity, designed with the purpose to close the bookstore. The lower court failed to properly balance the competing First Amendment interests of the parties, misconstruing and misapplying NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982).

This case presents a significant issue involving competing First Amendment interests, including those of the bookseller on one hand and the opinionated citizen on the other hand. It raises the question of whether overt acts of intimidation directed by picketers toward patrons and employees of an adult bookstore enjoy First Amendment protection. It also requires proper scrutiny and application of this court's decision in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

This court has long recognized that the bookstore itself presumptively falls under the protection of the First Amendment to the Constitution of the United States. *Roaden v. Kentucky*, 413 U.S. 496 (1973). Only recently, in the search and seizure context, this court had occasion to reaffirm the special protection accorded by the First Amendment. *Maryland v. Macon*, — U.S. —, 105 S.Ct. 2778 (1985). On the other hand, it is well settled that picketing is in part an exercise of the freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. *Building*

Service Employees International Union Local 262 v. Gazzam, 339 U.S. 532 (1950); *Hughes v. Superior Court*, 339 U.S. 460 (1950); *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968). At the same time, these cases and others have established that picketing is more than just speech and is, therefore, subject to regulation, including the imposition of reasonable time, manner and place restrictions. *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957); *See Cox v. New Hampshire*, 312 U.S. 569 (1941).

Restraints upon picketing and related conduct, both total and partial, have been approved by this court. A total restraint upon picketing has been sanctioned when it is enmeshed with violence or intimidation. *Milk Wagon Drivers' Union, Etc. v. Meadowmoor Dairies*, 312 U.S. 287 (1941). Furthermore, a total restraint may occur when the picketing is conducted for an unlawful purpose. *Hughes v. Superior Court*, 339 U.S. 460 (1950); *International Brotherhood, etc. v. Hanke*, 339 U.S. 470 (1950); *Building Service Employees International Union Local 262 v. Gazzam*, 339 U.S. 532 (1950).

A partial restraint prohibiting picketing strikers from threatening violence against or provoking violence on the part of any of the officers, agents, or employees of the employer was approved in *Youngdahl v. Rainfair, Inc.*, 312 U.S. 569 (1941). Similar partial restraints in the portions of the injunction not appealed from were noted by this court at footnote 4 in *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968). Those portions included blocking access to the premises of those who were the subject of the picketing, making any threats or using any violence against custo-

mers, employees or suppliers, or physically interfering with the performance of the employees' duties. Also the order had provided for a limitation on the number of pickets.

As noted earlier, this court has long recognized that picketing, and consequently its related activities, may be restrained when conducted for an unlawful purpose. *Hughes v. Superior Court,* 339 U.S. 460 (1950); *International Brotherhood, etc. v. Hanke,* 339 U.S. 470 (1950); *Building Service Employees International Union Local 262 v. Gazzam,* 339 U.S. 532 (1950). The continued vitality of the unlawful purpose doctrine was once again recognized by this court in *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 915, fn. 49. However, the state court refused to apply that doctrine in this case.

The admitted purpose of respondents' activities directed toward petitioner's patrons and employees was to destroy plaintiff's business and, in turn, its First Amendment interests. This admitted unlawful purpose is in direct contravention of the common law of the State of Illinois, which recognizes that malicious interference with a business is unlawful and subject to proper restraints. *Carpenters' Union v. Citizens Committee,* 333 Ill. 225 (1928); *Illinois Power Co. v. Latham,* 15 Ill.App.3d 156, 303 N.E.2d 448 (5th Dist. 1973). Nevertheless, the state court glossed over this issue by pointing to language of this court in *NAACP v. Claiborne Hardware Co.,* 458 U.S 886 (1982) and *Organization for a Better Austin v. Keefe,* 402 U.S. 415 (1971), which actually relates to the incidental effect of the conveyance of a message.

It is correct to say that any picketing probably is intended to, and does result in, an incidental effect on the

business picketed. Such an effect, however, must result from the conveyance of the message itself (i.e. the speech), not the conduct incidental to the speech. Nothing in *NAACP* or *Keefe* sanctioned the type of direct interference with a business which the respondents have engaged in. In fact, *NAACP* spoke directly of the lack of an improper purpose on the part of the defendants in that case:

> . . . [T]he purpose of petitioners' campaign was not to destroy legitimate competition. Petitioners sought to vindicate rights of equality and of freedom that lie at the heart of the Fourteenth Amendment itself.
>
> * * *
>
> At times the difference between lawful and unlawful collective action may be identified easily by reference to its purpose. In this case, however, petitioners' ultimate objectives were unquestionably legitimate.
>
> 458 U.S. at 914, 933.

In *Keefe,* which was heavily relied upon by the Illinois Appellate Court, this court observed that the pamphleteers plainly intended to influence a real estate broker's activities which were the subject of the pamphlet. This court likened the activities to a newspaper and sanctioned them as long as the means were peaceful. The pamphleteering, then, was the speech, and there was no ancillary conduct similar to the intimidation involved in this case.

The purpose of respondents' intimidation tactics is clear. It is to destroy the dissemination by petitioner of materials presumptively protected by the First Amendment to the Constitution of the United States. Proper application of this court's cases pertaining to unlawful purpose picketing, including *NAACP,* demands that, at a

minimum, the ancillary conduct of the picketers be enjoined.

The state court also misapplied and misinterpreted *NAACP* as it related to the imposition of reasonable time, place, and manner restrictions, which have long been recognized as appropriate by this court when applied to speech-related conduct. *See, e.g., Kovacs v. Cooper, Judge,* 336 U.S. 77 (1949); *Walker v. City of Birmingham,* 388 U.S. 307 (1967); *United States v. O'Brien,* 391 U.S. 367 (1968).

NAACP, of course, involved the issue of the imposition of civil damages upon certain individuals and organizations relating to a boycott of white-owned businesses over a period of several years in Claiborne County, Mississippi. In its opinion, this court reaffirmed the principles that the non-violent elements of boycott activities were entitled to First Amendment protection, while activities involving violence and threats of violence were not constitutionally protected. While indicating that the broad permanent injunction which had been entered must be dissolved, this court did state that the injunction could be modified to restrain unlawful conduct and the persons responsible for that conduct. 458 U.S. at 924, fn 67.

The Illinois Appellate Court's misapplication of *NAACP* appears to have resulted from its failure to properly analyze several factors, including whether the intimidation was direct or indirect, what persons were engaging in the intimidation and for what purpose, and what persons were the subject of the intimidation. On one hand, direct threats to unknown patrons seeking to discourage entry into a commercial enterprise are no different than incited violence. On the other hand, off premise threats

of social vilification and ostracization made to members of one's own group if they patronize certain premises is something different.

In *NAACP,* a black member of the "store watchers" or "Black Hats" stood outside of white-owned businesses recording the names of black persons who traded with those businesses. The individual watchers did nothing more than take the names of persons they apparently already knew. They did not threaten to do anything, such as take photographs or license plate numbers, if someone entered the premises. Furthermore, they did nothing at the store sites to subject patrons to actual photographing activities, to verbal abuse or harassment, or to cause a disruption to traffic or activities. Any threats of social ostracization or vilification were made at separate NAACP meetings consisting of members of their own group. In short, the intimidation was indirect and was equivalent to a picket standing silently at the front of a business. In this case, the intimidation was direct and constituted nothing less than an incitement to violence.

The state court also overlooked this court's continued emphasis in *NAACP* that the boycotters were seeking to vindicate their rights to equality and to equal protection guaranteed by the Fourteenth Amendment to the Constitution of the United States:

> Petitioners sought to vindicate rights of equality and of freedom that lie at the heart of the Fourteenth Amendment itself. The right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott designed to force governmental and economic

> change and to effectuate rights guaranteed by the Constitution itself.
>
> 458 U.S. at 914.

See also, 458 U.S. at 907, 915, 933. In this case, the respondents are not seeking to assert any correlative constitutional right of their own. The First Amendment is always present since it is the vehicle through which one may assert his other constitutional rights. However, unlike the blacks in *NAACP,* these respondents have no Fourteenth Amendment rights which they are attempting to assert. They certainly have no constitutional right to prohibit publication of the materials disseminated by petitioner, and they may do no more than convey their opinions regarding petitioner's business. Words that provoke immediate violence, or words coupled with conduct so as to promote violence, are not entitled to First Amendment protection. *Chaplinsky v. State of New Hampshire,* 315 U.S. 568 (1957); *Youngdahl v. Rainfair, Inc.,* 355 U.S. 131 (1957).

This court's prior holdings recognize the appropriateness of a restraint on either picketing or related conduct when no more than a property interest on the part of the person subjected to the activities is involved. In this case, not only does the petitioner have a property interest, but it has a First Amendment interest as well. Such an interest dictates that the courts closely scrutinize and control the activities of those who would restrain the dissemination of presumptively protected materials. As this court has often stated, any system of prior restraints bears a heavy presumption against its validity. *Heller v. New York,* 413 U.S. 483 (1973); *Or-*

ganization for a Better Austin v. Keefe, 402 U.S. 415 (1971).

In this instance, through proper balancing, both the interests of petitioner and respondents may be accommodated. The respondents may utilize signs to convey their opinions of pornography. At the same time, customers and employees of petitioner must be free to come and go, subject to whatever personal restraints they may impose on themselves as a result of the peaceful conveyance of the message. The imbalance resulting from the state court's decision deals a critical blow to the First Amendment freedoms long accorded the bookstore. Continued vitality of the First Amendment demands that the imbalance be righted.

CONCLUSION

Because of the importance of the First Amendment issues at stake on both sides and because of the improper application of *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886 (1982), which results in a conflict with the prior decisions of this court, this court should grant certiorari to review and reverse the holding of the Appellate Court of the State of Illinois, Fourth District.

Respectfully submitted,

GLENN A. STANKO
J. STEVEN BECKETT
RENO, O'BYRNE & KEPLEY, P.C.
501 West Church Street
P. O. Box 693
Champaign, IL 61820
(217) 352-7661

Attorneys for Petitioner

August, 1985.

APPENDIX

EXHIBIT A

(Filed January 30, 1985)

NO. 4-84-0591

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

EAGLE BOOKS, INC., a corporation,
d/b/a Urbana News,

Plaintiff-Appellant,

v.

RICHARD M. JONES, CITIZENS FOR DECENY
THROUGH LAW, URBANA-CHAMPION, ILLINOIS,
CHAPTER, a voluntary unincorporated
association, and CRUSADERS CHURCH,
a voluntary unincorporated association,

Defendants-Appellees.

Appeal from Circuit Court of Champaign County
No. 84C760

George S. Miller, Judge Presiding.

JUSTICE MILLS delivered the opinion of the court:

Pornography is, at best, a seamy business.

But as distasteful as it may be to most of us, it is still legal to traffic in it—at least as of this writing.

Eagle Books/Urbana News is an adult bookstore. It filed a complaint on August 3, 1984, seeking preliminary

and permanent injunctive relief from certain picketing activities which defendants conducted at plaintiff's business premises. On August 7, 1984, a hearing was held and the circuit court preliminarily enjoined defendants from trespassing on plaintiff's business premises and from blocking access to the business.

However, the court denied the bookstore's request that defendants be enjoined from harassing and intimidating its patrons and employees through the use of shouts, verbal abuse, and through the taking of photographs or license plate numbers, or the threatened taking of photographs or license plate numbers. Plaintiff's requests that the number of picketers be limited and that they be restrained from interfering with traffic in front of plaintiff's store were also denied.

The bookstore now brings this interlocutory appeal from that part of the court's order which denied portions of its request for preliminary injunctive relief.

We affirm.

The complaint stated that plaintiff owns and operates an adult bookstore and arcade located at the corner of Cunningham Avenue and Park Street in Urbana. Parking is available on three sides of the store and a public sidewalk is located along Cunningham Avenue, approximately 20 to 30 feet from the store.

The complaint alleged that defendants had engaged in picketing activities at plaintiff's business premises since late June 1984. The number of picketers had ranged from 4 to 20, with the picketing being conducted mainly during

the lunch hour on weekdays, during the evenings on weekdays, and on Saturdays.

Plaintiff attached to its complaint two newspaper articles which contained statements alleged to have been made by defendants indicating that the purpose of the picketing was to force plaintiff to close its store by discouraging patrons from entering the premises. Defendant Richard Jones was quoted as stating that "anybody who does not want their picture taken had better not come here."

Plaintiff alleged that the defendants had been harassing and intimidating its patrons, potential patrons, and employees by taking photographs, threatening to take photographs, threatening to publish photographs, taking license plate numbers, threatening to take license plate numbers, shouting, and verbal abuse. Several specific incidents were alleged, including one involving a patron towards whom the defendants had directed a chant while he was in the store, and another involving derogatory comments by a picketer directed at a female employee. The plaintiff also alleged that one patron shoved a picketer who "jumped" in front of him to take his picture. Numerous trespasses were also alleged. It was alleged that the number of picketers was such that entry into plaintiff's parking area was impeded and discouraged. Plaintiff also claimed that traffic on Cunningham Avenue was interfered with.

Plaintiff alleged "numerous" calls to the Urbana Police Department with no resulting charges. It further complained of a substantial loss of revenue during the period in which the picketing had been conducted. Plain-

tiff sought preliminary and permanent injunctive relief from the activities of the defendants.

On August 7, 1984, defendants filed an "Objection to Issuance of Temporary Restraining Order or Preliminary Injunction." They claimed therein that the allegations in the complaint were insufficient to support the issuance of a preliminary injunction.

Also on August 7, 1984, a hearing was held on plaintiff's request for a preliminary injunction. After the hearing, the court enjoined the defendants from trespassing and from blocking access to plaintiff's premises. However, all other aspects of plaintiff's request for preliminary injunctive relief were denied. Plaintiff subsequently filed timely notice of interlocutory appeal, pursuant to Supreme Court Rule 307(a) (1) (87 Ill. 2d R. 307(a) (1)).

On appeal, plaintiff alleges that the circuit court improperly denied plaintiff's request that defendants be enjoined from harassing and intimidating its patrons and employees through the use of shouts, verbal abuse, and by taking photographs, threatening to take photographs, threatening to publish photographs, taking license plate numbers, and threatening to take license plate numbers. Plaintiff also claims that the trial court erred by failing to preliminarily enjoin defendants from interfering with traffic on Cunningham Avenue and by failing to limit the number of picketers. Defendants respond that the trial court's decision was not error, primarily because plaintiff failed to show a likelihood of success on the merits of its requests.

The party requesting a preliminary injunction must show: (1) that he possesses a right which needs protec-

tion; (2) that he will suffer irreparable injury without the protection; (3) that there is no adequate remedy at law; (4) that he has a substantial likelihood of succeeding on the merits; and (5) in the absence of preliminary relief, he will incur a greater injury than would be received by the objector if the relief was granted. (*Johnson v. Gene's Supermarket, Inc.* (1983), 117 Ill. App. 3d 295, 453 N.E.2d 83.) The purpose of a preliminary injunction is to preserve the *status quo*. (*Illinois Consolidated Telephone Co. v. Aircall Communications, Inc.* (1981), 101 Ill. App. 3d 767, 428 N.E.2d 747.) On review, the decision of the circuit court in granting or denying a request for preliminary injunction will not be disturbed absent an abuse of discretion. *Lums Restaurant Corp. v. Bloomington Restaurant Investments, Inc.* (1981), 92 Ill. App. 3d 1143, 416 N.E.2d 751.

Here, plaintiff claims that it has properly established each of the above-listed, required showings. Defendants do not argue that requirements (1) and (5) were not established. However, they do argue that plaintiff failed to establish irreparable injury, an inadequate remedy at law, and a likelihood of success on the merits. Defendants concede that all of plaintiff's well-pleaded facts must be taken as true since an answer to the complaint had not been filed at the time of the hearing. See *Johnson.*

Without any citation to authority, defendants claim that plaintiff has failed to demonstrate irreparable injury. However, the loss of customers and sales and the threat of the continuation of such losses to a legitimate business interest, as alleged by plaintiff here, is sufficient to show that plaintiff will suffer irreparable injury unless protect-

ed by the court. *U-Haul Co. v. Hindahl* (1980), 90 Ill. App. 3d 572, 413 N.E.2d 187; *Office Electronics, Inc. v. Grafic Forms, Inc.* (1978), 56 Ill. App. 3d 395, 372 N.E.2d 125.

Defendants also allege that money damages would provide plaintiff with an adequate legal remedy. However, while immediate damages in loss of sales may be calculable, the potential loss of future business is incapable of adequate computation. (*U-Haul.*) Moreover, even though plaintiff's ultimate recovery may be a money judgment, a preliminary injunction may be granted when damages are difficult to quantify at the time of the hearing. (*Lums.*) The threatened loss of future customers and revenues made plaintiff's remedy at law inadequate here.

The most serious issue raised on appeal is whether the plaintiff has shown a likelihood of success on the merits. In its written order, the circuit court denied the part of plaintiff's request for injunctive relief that is the subject of this appeal for the reason that "plaintiff would have no likelihood of success on the merits." Therefore, plaintiff argues that the circuit court abused its discretion in determining that it had no likelihood of success on the merits.

Initially, plaintiff concedes that, in general, picketing is an exercise of the freedom of speech protected by the first and fourteenth amendments to the United States Constitution. However, plaintiff claims that picketing may be restricted by the courts when it is directed toward an unlawful purpose or when it is conducted in a violent manner. The plaintiff argues that the allegations in its

complaint demonstrate that defendants' picketing here was directed toward an unlawful purpose and was violent in manner. Accordingly, plaintiff argues that defendants should have been preliminarily enjoined from using harassing and intimidating tactics in furtherance of an unlawful purpose.

Plaintiff first argues that an absolute prohibition of picketing activities is appropriate where the picketing is for an unlawful purpose. Plantiff cites *Hughes v. Superior Court* (1950), 339 U.S. 460, 94 L. Ed. 985, 70 S. Ct. 718, *International Brotherhood of Teamsters, Local 309 v. Hanke* (1950), 339 U.S. 470, 94 L. Ed. 995, 70 S. Ct. 773, *Building Service Employees International Union, Local 262 v. Gazzam* (1950), 339 U.S. 532, 94 L. Ed. 1045, 70 S. Ct. 784, *Board of Education v. Redding* (1965), 32 Ill. 2d 567, 207 N.E.2d 427, and *Bitzer Motor Co. v. International Brotherhood of Teamsters, Local 604* (1953), 349 Ill. App. 283, 110 N.E.2d 674, in support of this proposition.

However, these cases involved government regulation of economic activity and labor disputes, unlike the present case. The distinction between picketing involving commercial activity and public issue or political picketing was detailed by the Supreme Court in its recent decision of *NAACP v. Claiborne Hardware Co.* (1982), 458 U.S. 886, 73 L. Ed. 2d 1215, 102 S. Ct. 3409, where it stated:

> "This Court has recognized the strong governmental interest in certain forms of economic regulation, even though such regulation may have an incidental effect on rights of speech and association. [Citations.] * * * Secondary boycotts and picketing by labor unions may be prohibited, as part of 'Congress' striking of the

> delicate balance between union freedom of expression and the ability of neutral employers, employees, and consumers to remain free from coerced participation in industrial strife.' [Citations.]
>
> While States have broad power to regulate enonomic activity, we do not find a comparable right to prohibit peaceful political activity such as that found in the boycott in this case. This Court has recognized that expression on public issues 'has always rested on the highest rung of the hierarchy of First Amendment values.' [Citation.] '[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.' Citation.] There is a 'profound national commitment' to the principle that 'debate on public issues should be uninhibited, robust, and wide-open.' [Citation.]" 458 U.S. 886, 912-13, 73 L. Ed. 2d 1215, 1235-36, 102 S. Ct. 3409, 3425-26.

Therefore, the cases cited by plaintiff can be distinguished as involving economic or commercial matters over which government has greater regulatory powers. All of the cases involved labor dispute picketing which the respective courts deemed unlawful. These decisions involved cases in which the picketers' rights had to be balanced against a strong governmental interest in economic and commercial regulation that is absent in the present case. Instead, the defendants, here, are participating in a form of public issue picketing which the court spoke of in *NAACP*.

Plaintiff also cites *Austin Congress Corp. v. Mannina* (1964), 46 Ill. App. 2d 192, 196 N.E.2d 33, for the proposition that picketing for the purpose of economic ruination is unlawful. However, that case should be read in light of two subequent Supreme Court cases, *NAACP* and *Organization for a Better Austin v. Keefe* (1971), 402 U.S.

415, 29 L. Ed. 2d 1, 915 S. Ct. 1575. In *NAACP* the petitioners used picketing and other activities to urge a boycott of certain merchants who allegedly practiced racial discrimination. The Supreme Court stated that "the petitioners certainly foresaw—and directly intended—that the merchants would sustain economic injury as a result of their campaign;" however, the state interest in economic regulation could not justify an injunction against a politically motivated boycott designed to force economic change. (458 U.S. 886, 914, 73 L.Ed. 2d 1215, 1236-37, 102 S. Ct. 3409, 3426.) The Supreme Court also expressed approval of an earlier case involving picketing designed to inflict economic injury:

> "In *Thornhill v. Alabama,* 310 U.S. 88, 84 L. Ed. 1093, 60 S. Ct. 736, the Court held that peaceful picketing was entitled to constitutional protection, even though, in that case, the purpose of the picketing 'was concededly to advise customers and prospective customers of the relationship existing between the employer and its employees and thereby to induce such customers not to patronize the employer.'" 458 U.S. 886, 909, 73 L. Ed. 2d 1215, 1233, 102 S. Ct. 3409, 3424.

Likewise, in *Keefe* the petitioners' pamphleteering was designed to injure respondent's real estate business by forcing respondent to end his sale of real estate in the community of Austin. The Supreme Court stated:

> "Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. [Citation.] Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means

> are peaceful, the communication need not meet standards of acceptability." 402 U.S. 415, 419, 29 L. Ed. 2d 1, 5, 91 S. Ct. 1575, 1577-78.

It is clear, then, that public issue picketing is entitled to full first amendment protection. Where, as here, such picketing also inflicts economic injury on the object of the picketing, that fact alone does not make the picketing unlawful. (*NAACP; Keefe; Thornhill.*) Although defendants' message may have injured the plaintiff economically, it was still entitled to full first amendment protection.

Plaintiff next argues that defendants' activities which involved violence and threats of violence should have been enjoined by the circuit court.

The Supreme Court has noted that picketing involves elements of both speech and conduct and has indicated that the "conduct" aspect of picketing may be controlled as to time, place, and manner. (*Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.* (1968), 391 U.S. 308, 20 L. Ed. 2d 603, 88 S. Ct. 1601.) It is clear that picketing which is conducted in a violent manner may be restrained. *Logan Valley*; *Milk Wagon Drivers Union, Local 753 v. Meadowmoor Dairies, Inc.* (1941), 312 U.S. 287, 85 L. Ed. 836, 61 S. Ct. 552.

Plaintiff claims that actions by the defendants involving the taking of photographs and license plate numbers of its patrons and employees, as well as verbal abuse directed at patrons and employees, constitute intimidation which may be enjoined. The plaintiff cites *Ellingsen v. Milk Wagon Drivers' Union Local 753* (1941), 377 Ill. 76, 35 N.E.2d 349, in support of its position. In *Ellingsen,* the Illinois Supreme Court stated:

> "[T]hreats and attempts to coerce by intimidation are not peaceful picketing * * *. We are of the opinion that such threats amount to conduct which may be enjoined." 377 Ill. 76, 86, 35 N.E.2d 349, 354.

However, this case should be read in light of the recent Supreme Court decision in *NAACP*. There the picketers also engaged in "store watching" wherein individual picketers stood outside of the boycotted stores and identified those who traded with the merchants. The names of the persons who violated the boycott were read at meetings of the local NAACP chapter and were published in a local newspaper. These persons were branded as traitors, socially ostracized, and called demeaning names. The Supreme Court stated that there was nothing unlawful about the boycotters' activities even though they may have caused apprehension in others. The court went on to state that marches, speeches, and threats of social ostracism are all entitled to constitutional protection. The Supreme Court also stated that constitutionally protected speech "does not lose its protected character * * * simply because it may embarrass others or coerce them into action." (458 U.S. 886, 910, 73 L. Ed. 2d 1215, 1234, 102 S. Ct. 3409, 3424.) Accordingly, the Supreme Court reversed the judgment of the Mississippi Supreme Court to the extent that its judgment rested "on the ground that 'many' black citizens were 'intimidated' by 'threats' of 'social ostracism, vilification, and traduction,'" since such a judgment would be "flatly inconsistent with the First Amendment." (458 U.S. 886, 921, 73 L. Ed. 2d 1215, 1242, 102 S. Ct. 3409, 3430.) Indeed, it would appear that nearly all picketing involves some degree of "intimidation."

In the present case, defendants' photograph taking, license plate number recording, and isolated instances of

verbal abuse were meant to embarrass and coerce patrons of plaintiff's business. These tactics are very similar to the ones employed by the boycott participants in *NAACP*. On the basis of that case, we cannot say that these tactics rise to the level of "violence" that is subject to government control. Similarly, the single instance of actual violence alleged in plaintiff's complaint cannot serve to taint the defendants' collective activity as "violent." (See *NAACP; Milk Wagon Drivers Union.*) Such trivial instances of violence on the part of the objects of the picketing should not form the basis for an injunction of defendants' otherwise peaceful activities.

The plaintiff also claims that the defendants' activities amount to "intimidation" in violation of section 12-6 of the Criminal Code of 1961 (Ill. Rev. Stat. 1983, ch. 38, par 12-6). However, as a general rule, courts will not enjoin criminal activity unless the conduct that constitutes the crime also serves as a basis for equitable intervention. (*People ex rel. Director of Department of Children & Family Services v. Illinois Protestant Children's Home, Inc.* (1965), 33 Ill. 2d 60, 210 N.E.2d 217, *cert. denied* (1966), 384 U.S. 905, 16 L. Ed. 2d 358, 86 S. Ct. 1338; *Burden v. Hoover* (1956), 9 Ill. 2d 114, 137 N.E. 2d 59.) Since defendants' alleged intimidating tactics here do not provide a basis for enjoining the picketing (see *NAACP*), the fact that a criminal law may have been violated does not make their conduct more "enjoinable."

Finally, the plaintiff claims that the number of picketers, as well as their activities, serves to endanger motorists traveling on Cunningham Avenue. This allegation, even when taken as true, does not amount to violent or

unlawful conduct on the part of the defendants. Furthermore, the plaintiff has no standing to argue an injury to the public in general. *Irving-Austin Building Corp. v. Village Homebuilders, Inc.* (1941), 312 Ill. App. 179, 37 N.E. 2d 927.

For all of the foregoing reasons, the judgment of the circuit court of Champaign County is affirmed.

Affirmed.

McCULLOUGH and TRAPP, JJ., concur.

EXHIBIT B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

June 4, 1985

Mr. Glenn A. Stanko
Reno, O'Byrne & Kepley
501 West Church St.
Champaign, Ill. 61820

No. 61529—Eagle Books, Inc., etc., petitioner, v. Richard M. Jones, et al., etc., respondents. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 25, 1985.

EXHIBIT C

First Amendment
Constitution of the United States

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof of abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment
Constitution of the United States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

EXHIBIT D

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT

CHAMPAIGN COUNTY, ILLINOIS

No. 84-C-760

EAGLE BOOKS, INC., a corporation,
d/b/a Urbana News,

Plaintiff,

v.

RICHARD M. JONES, CITIZENS FOR DECENCY THROUGH LAW, URBANA-CHAMPAIGN, ILLINOIS CHAPTER, a voluntary unincorporated association, and CRUSADERS CHURCH, a voluntary unincorporated association,

Defendants.

ORDER

(Filed August 13, 1984)

THIS CAUSE coming to be heard on the application for a preliminary injunction as set forth in the verified complaint of plaintiff, EAGLE BOOKS, INC., a corporation, d/b/a Urbana News, with plaintiff being present by its attorney, Glenn A. Stanko of Reno, O'Byrne & Kepley, P.C., and defendants, RICHARD M. JONES, CITIZENS FOR DECENCY THROUGH LAW, URBANA-CHAMPAIGN, ILLINOIS CHAPTER, and CRUSADERS CHURCH, being present by their attorney, Joseph D. Pavia of Kirtley-Pavia-Marsh, and with hearing and argument being held on the undenied allegations of said verified complaint;

The court finds that a preliminary injunction should issue restraining defendants from trespassing upon plain-

tiff's premises and restraining defendants from blocking access to plaintiff's premises, it appearing that plaintiff will suffer irreparable injury, and that plaintiff has no adequate remedy at law and has a reasonable likelihood of success on the merits;

The court further finds that the balance of the prayer for a preliminary injunction should be denied, it appearing that plaintiff would have no likelihood of success on the merits;

IT IS THEREFORE ORDERED AND ADJUDGED that defendants, RICHARD M. JONES, CITIZENS FOR DECENCY THROUGH LAW, URBANA-CHAMPAIGN CHAPTER, and CRUSADERS CHURCH, their officers, agents, employees and those persons in active concert or participation with them, be, and the same hereby are, enjoined and restrained from trespassing on plaintiff's business premises at 602 North Cunningham Avenue, Urbana, Illinois, including its parking lot areas, and are further enjoined and restrained from blocking access to plaintiff's premises, including its parking lot areas;

IT IS FURTHER ORDERED AND ADJUDGED that the balance of the prayer for preliminary injunctive relief be denied, including the prayer for a preliminary injunction enjoining and restraining defendants from photographing or threatening to photograph patrons, potential patrons, and employees; from threatening to publish photographs of patrons and potential patrons; from recording license plate numbers of patrons, potential patrons, and employees; from threatening to record license plate numbers of patrons and potential patrons; from harassing or intimidating, or attempting to harass or intimidate,

patrons, potential patrons, and employees; from picketing anywhere other than on the public sidewalk along Cunningham Avenue; from shouting and yelling at patrons, potential patrons, employees, and traffic passing by plaintiff's business premises; from soliciting vehicles to stop on Cunningham Avenue for purposes of signing petitions; and from having more than a certain number of picketers at any one time.

This order granting a preliminary injunction in part and denying a preliminary injunction in part shall remain in force and effect during the pendency of this cause or until further order of the court.

ENTERED this 13 day of August, 1984.

/s/ George S. Miller,
Circuit Judge

APPROVED AS TO FORM:

/s/ Glenn A. Stanko
Attorney for Plaintiff

/s/ Joseph D. Pavia
Attorney for Defendants